

# **House of Representatives Standing Committee on Economics Inquiry – Insurers responses to major 2022 flood claims**

Submission by Legal Aid Queensland

# Insurers response to major 2022 Floods Claims

## Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Economics inquiry into Insurers responses to 2022 Flood claims. LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day-to-day application of the law in courts, tribunals and Ombudsman schemes. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ’s Consumer Protection Unit lawyers have extensive experience providing specialist advice and representation to vulnerable clients in insurance matters following disasters. The unit provides advice to clients as well as lawyers and financial counsellors throughout Queensland in relation to mortgage stress, housing repossession, debt, contracts; loans; telecommunications and unsolicited consumer agreements.

LAQ assisted and represented clients who have legal problems as a result of the February-March 2022 floods events and has been representing and providing advice to Qld consumers in insurance matters following disasters for over 20 years. This submission is informed by that knowledge and experience.

## Terms of Reference

- 1. Responses of insurers to the claims resulting from major 2022 floods, including the:**
  - (a) south-east Queensland and northern New South Wales (NSW) floods of February and March 2022;**
  - (b) Hunter and greater Sydney floods of July 2022;**
  - (c) Victorian, NSW and Tasmanian floods of October 2022; and**
  - (d) central west NSW floods of November and December 2022.**

**2. The inquiry shall have regard to the following matters in respect of the aforementioned floods:**

**(a) the experiences of policyholders before, during and after making claims;**

In LAQ's experience some consumers have a really positive claims experience and some consumers have a really poor claims experience.

**The problem**

In LAQ's experience policy holders who have a poor claims experience find the entire claims process:

1. Stressful and overwhelming,
2. Lengthy,
3. Difficult if they are not technologically capable.
4. Inconvenient if there is no option to physically lodge a complaint with an insurer who is available and, in the community subsequent to the disaster. (Following a disaster many consumers will not have easy access to a mobile phone or the internet to lodge claims and are unable to use electronic lodgement which is the lodgement option preferred by most insurers.)
5. Frustrating due to insurer's call centre staff discouraging lodgement of claims.
6. Traumatizing due to there being multiple case managers dealing with their claim which means they are often telling their story multiple times.

In LAQ's experience, people who have a good claims experience, tend to have a positive first experience when they are initially lodging their claim. In our experience, that sets up a good relationship between the insurer and consumer. What leads to a good claims experience is:

- (a) Knowledgeable and trauma informed call centre staff.
- (b) A variety of lodgement options (physical and electronic).
- (c) Clearly identified and accessible information about the claims process; and:
- (d) Streamlined claims assessment processes.

**The solution**

1. Prompt, clear, trauma informed and friendly communication during the 1<sup>st</sup> phone call is important.
2. Implementing the solutions set out by LAQ in its responses to Terms of Reference 2(b)-(i) will improve the claims experience for consumers.

**(b) the different types of insurance contracts offered by insurers and held by policyholders;**

**The problem**

In LAQ's experience:

- (a) no two insurance policies are the same.

- (b) the same or similar terms in different insurance policies are defined differently.
- (c) consumers find it difficult to understand and engage with insurance products due to their complexity and disclosure documents which are lengthy and full of legal and technical jargon.
- (d) The current standard cover regime does not assist consumers to compare products because insurers are able to derogate from it by reducing the cover offered.

### The solution

1. Insurance documents must be shorter, use plain language and have minimal legal jargon.
2. There should be standard definitions for common terms such as a storm surge, wear and tear and maintenance across the industry.
3. The Standard cover regime should be reviewed with a base cover established that must be used by all insurers. Insurers can then add to that base cover to differentiate their products but not take away from it.

### (c) timeframes for resolving claims;

#### The problem

LAQ acknowledges that in 2022 insurers received an unprecedented level of claims and this led to an unprecedented number of complaints which had the effect of compounding response times and impacted the time taken to assess and resolve claims and complaints.

#### The solution

In LAQ's submission, if insurers implement the solutions set out in the responses to points (d) – (i) below these response times can be improved even in unprecedented times.

### (d) obstacles to resolving claims, including factors internal to insurers and external, such as access to disaster-hit regions, temporary accommodation, labour market conditions and supply chains;

#### *Maintenance, wear and tear and defect clauses*

#### Prior to a claim

#### The problem

1. Every insurance contract that LAQ has seen contains a maintenance, wear and tear or defect clause. These are exclusion clauses that permit an insurer to deny a claim if the property was not properly maintained, had wear and tear or had a defect that meant the damage to the property would not have occurred or would have been substantially reduced if the issue with the property was not there.
2. Each insurer's maintenance, wear and tear or defect clause varies slightly resulting in a lack of consistency across the industry.

3. Each insurer's interpretation and application of these clauses differs. LAQ has encountered inconsistency in the interpretation of maintenance, wear and tear or defect clauses within the same insurer.
4. No guidance is provided in the clause or separately by the insurer about what is the obligation to properly maintain a property or keep it free from wear and tear or defects.
5. Some defects to a property or areas of a property requiring maintenance are not visible or known to a consumer without specialist access and knowledge.

### **The effect**

- (a) Consumers are unaware of the maintenance and wear and tear obligations under an insurance policy or that they are not sure what the clauses requires them to do to meet their obligations.
- (b) Maintaining a property requires either:
  - (i) active participation e.g. checking the roof which unless a problem has arisen most consumers are not aware they need to do or cannot safely undertake or
  - (ii) engaging experts to undertake the work which many consumers are unable to afford particularly in the current cost of living crisis.

### **The solution**

1. Introduction of uniform definitions and interpretation of maintenance, wear and tear and defect clauses.
2. Insurers inform consumers of their obligations and take steps to ensure consumer understanding of these clauses about what is meant by maintaining a property.
3. The insurance industry develops a 1-page guide for consumers explaining what steps they must take to adequately maintain their property.

### **During the claims process**

#### **The problem**

LAQ provides advice and representation to a significant number of consumers who have had their claims either partially or fully denied on the basis of wear and tear to the property or a lack of maintenance.

LAQ has encountered consumers experiencing:

1. Production by an insurer of an assessor or expert's report that asserts there was a lack of maintenance to the property where limited detail is provided, or the basis of the rejection is for minor defects such as a screw loose in the roof.
2. An insurer's claim or internal dispute resolution (IDR) decision that asserts there has been a lack of maintenance to the property therefore the insurer can rely on the maintenance clause to exclude some or all of the claim where either the claim and IDR decision does not show an adequate causal link between the damage that has occurred and the lack of maintenance to a property.
3. Insurers failing to explain the information that they are relying on to deny a claim on the basis of a lack of maintenance.

### The effects

1. Insurance claims that should be approved are being denied on the basis of an inappropriate reliance on maintenance, wear and tear and defect clauses.
2. These claims are not being always overturned through the IDR process.
3. Many claims are unnecessarily having to be run through the AFCA process causing consumers unnecessary worry and stress.
4. Most concerningly, it is likely a number of consumers did not pursue their rights under the AFCA and IDR processes after their claims were refused on the basis of a lack of maintenance. Many consumers find it difficult to navigate the complaint process, once a claim has been rejected, given the trauma they have experienced during a disaster.

#### Case Study 1:

Mrs T originally had her claim denied by her insurer following the February 2022 Floods as a result of a lack of maintenance to her roof. Further investigation showed that 2 weeks earlier the same insurer had paid her a cash settlement for an earlier insurance claim for hail damage to her roof. She was in the process of having the roof fixed when the February 2022 rain event happened. The insurers IDR team confirmed the decision. It was not until LAQ's involvement that the claim was paid by the Insurer.

#### Case Study 2:

Ms K had her insurance claim denied on the basis of a lack of maintenance to her roof. In Ms K's experience the water came through her front door. The decision did not address Ms K's experience. The decision was subsequently changed after LAQ's involvement.

### The solution:

1. The quality of reports prepared by assessors and experts must be improved. This is achieved by reports clearly and in detail:
  - (a) Identifying what damage occurred to the property.
  - (b) Specifically identifying what maintenance has not been undertaken by the consumer.
  - (c) Whether the failure to maintain would have made a significant difference to the outcome and damage sustained to the property.
  - (d) Clearly identifying and explaining the causal link between the failure to maintain and how that resulted in a significant contribution to the damage sustained to the property,
2. Claims and IDR staff must more critically analyse expert reports and investigate the circumstances of a claim where potential maintenance issues have been identified. It is not sufficient to look at a report, see there may have been maintenance issues and then deny the claim.

Claims decisions should provide clear explanations for claims that are denied based on wear and tear or lack of maintenance. In particular, decisions should explain:

  - the maintenance that should have occurred.

- how that maintenance would have prevented or made a material difference to the loss that was sustained to the property.
  - the causal link between the loss and the wear and tear or lack of maintenance.
3. Insurers should review all claims from the 2022 rain events in light of the above where they have denied claims on the basis of a lack of maintenance that have not otherwise been reviewed through the AFCA or IDR process.
  4. Clients should be directed to legal advice regarding claims denied on the basis of lack of maintenance.

## **Cash Settlements**

### **The problem**

Cash settlements and the process surrounding receiving a cash settlement is poorly understood by consumers.

Typically, consumers remain unaware that:

1. If they receive a cash settlement and they have a mortgage, the holder of their mortgage is entitled to that payout.
2. It is often easier for an insurer to access a builder than it is for a consumer to locate and engage a builder.
3. Accepting a cash settlement or even a partial cash settlement means taking on the role of a building project manager. Many consumers including older consumers and CALD clients struggle to successfully undertake this role.
4. Due to a current market failure of available and suitably qualified builders, building materials and the cost-of-living crisis, consumers are experiencing delays in commencing and completing building works and are encountering increased building costs not covered by the cash settlement.
5. Many insurers offer lifetime warranties if a property is repaired using a builder employed by the insurer. Similar warranties are not available to consumers who accept cash settlements.
6. Consumers who settle their claim within 1 month of the disaster have 12 months to ask for their cash settlement amount to be reconsidered under the General Insurance Code of Practice. Consumers who cash settle 3, 6, 9 or 12 months after a disaster do not have the same rights despite damage often caused by a disaster only being identified months after the damage has occurred.

### **The effect**

1. People are accepting cash settlements because it is easier, rather than if it is in their interests.

### **The Solution**

1. The current cash settlement factsheet needs to be updated with the input from consumer advocates and plain language experts to include detailed information regarding the advantages and disadvantages of accepting a cash settlement.
2. The rights of consumers who take a cash settlement should be extended. The General Insurance Code should be amended so that, if a consumer cash settles within 12

months of a disaster occurring, they have 12 months in which to ask the insurer to review the amount of the cash settlement when further damage is identified.

3. Clients should be directed to obtain legal advice regarding cash settlements before accepting the settlement.

### **Temporary Accommodation**

In LAQ's experience, most insurance contracts will contain a temporary accommodation clause that will either provide a consumer with:

- (a) a fixed amount of money to use for temporary accommodation, or
- (b) a fixed period of temporary accommodation usually up to 12 months.

### **The problem**

The problems encountered by consumers with the fixed amount of money option is that subsequent to a disaster; availability of accommodation decreases and costs associated with accommodation increase, leaving consumers having to pay for their own accommodation shortly after a disaster when their funds paid for temporary accommodation are exhausted.

Similarly, the problems encountered by consumers with the fixed period of accommodation option are that market failure and increased building costs lead to increased time periods for completion of work which regularly extend beyond the usual 12 months period leaving the consumer out of pocket or without accommodation.

LAQ supports the approach of a number of insurers which is to continue paying temporary accommodation where this has occurred.

For both types of clauses, consumers may find themselves staying a significant distance from their community which adds to their feelings of loss and dislocation.

### **The solutions**

LAQ supports insurers using a flexible approach to temporary accommodation clauses.

An example of such flexibility has been shown by Suncorp. Suncorp has allowed consumers to make the decision to cash in their temporary accommodation benefit to purchase a caravan or motorhome. This approach has allowed many consumers to stay at their home environment, remain in and connected to their communities and to be present as repairs are being undertaken to their properties.

## **Supply chain issues and Builder Shortages**

### **The problem**

Since 2022, there has been a market failure in availability of qualified builders, and this has significantly impacted building completion time frames across Queensland. In LAQ's experience most consumers are aware of and understand the issues impacting building completion timeframes provided they are kept informed of progress and are promptly informed about these issues and consulted in relation to changes to agreed timeframes. Improvements in communication by insurers to consumers regarding these issues is needed and would result in reduction in consumers' stress.



LAQ has also observed an increase in the number of complaints relating to the quality of the building work. This caused delays in final completion dates due to necessary inspection reviews and remedial work needing to be undertaken. In LAQ's experience, monitoring the quality of work by insurers has been an issue for consumers and not to the standards experienced in previous disaster responses.

### **The solution**

1. Insurers must improve communication with consumers in relation to supply chain issues beyond their control.
2. Insurers must improve monitoring of the quality of work by builders, engaged by insurers.

### **(e) insurer communication with policyholders;**

### **The problem**

Insurance is a complex product which a majority of consumers find to be technical and difficult to understand and engage with. This is because:

1. PDS documents are long, complicated and full of legal jargon and technical terms. To assist consumers in understanding their obligations under their insurance policy, PDS documents should be rewritten with a focus on using plain and accessible language to reduce the complexity of the documents.
2. Letters to insured consumers are generic and presume a level of sophistication and understanding lacking in consumers with literacy and numeracy issues.
3. Lack of consistency in the industry regarding call centre responses and the impact this has on the claims process.
4. Failure to have a consistent process for assisting consumers experiencing vulnerability who struggle to understand and engage with the claims process.
5. There is not enough flexibility or adaptability in insurer's processes to encourage people with mental and physical disabilities to easily engage with them.
6. Insurers are not consistent in providing regular communication to consumers. e.g. an insurer might say they will call at the end of the week and they don't, or consumers will say I have left 14 messages and they have called me back twice.

### **The effects**

- (a) Many consumers do not trust the process and believe that insurers are looking for reasons to deny their claim.
- (b) Many consumers disengage with the disclosure process because it is too complex.

### **The solutions**

1. More creative approaches to disclosure. Insurers should look at video and other media means for options that consumers in today's society are more likely to engage with.
2. Insurance documents should be shorter, less complex and written in plain and accessible language.
3. There should be consistency in the definition of key terms in insurance contracts.

4. Streamlined claims processes including the introduction of one case manager for all claims.
5. Offer consumers a call back system so they do not have to sit on hold for long periods of time.
6. Insurers need to improve processes for engaging with all vulnerable consumers including but not limited to:
  - (i) Consumers affected by a disaster.
  - (ii) Consumers experiencing mental and physical disabilities.
  - (iii) Consumers affected by domestic and family violence.
  - (iv) Consumers experiencing a range of other vulnerabilities.

**(f) accessibility and affordability of hydrology reports and assessments to policy holders;**

**The problem**

In LAQ's experience, hydrology reports and assessments and other expert reports are not accessible or affordable for consumers because:

1. There are only a finite number of hydrology experts available to do reports.
2. Many hydrologists and other experts make a substantial portion of their living from insurer referrals. This means there is very limited availability for consumers to access a hydrologist.
3. The reports are expensive. Many consumers are struggling financially and have no spare funds to pay for reports.
4. Some consumers have had the experience of a hydrology or other expert report directly contradicting their own lived experience of a flood event.
5. Some hydrology or other expert reports do not draw causal links between the events in their reports and the clauses in an insurance policy that allow a claim to either be paid or denied.

**The effects**

1. There is a power imbalance between consumers and insurers when it comes to accessing expert reports.
2. Lack of trust and confidence related to concerns about conflict of interest in relation to hydrologists and their relationships with insurer.
3. During the 2022 Disaster, LAQ saw clients experiencing issues with obtaining appropriately qualified experts to comment on mould issues, roof wear and tear issues, defects and wear and tear with stumps and other specialist building issues.

**The solution**

1. A panel of experts that does not write reports for the insurer that can be accessed by consumers.
2. A scheme that allows consumers affected by disasters to access funds to pay for an expert's report. In the event the claim is successful or partially successful the insurer

pays the cost of the report back to the scheme. In the event that claim is unsuccessful the funds used to pay for the report are written off by the scheme.

**(g) affordability of insurance coverage to policyholders;**

**The problem**

In LAQ's submission, insurance that protects vulnerable Queenslanders from floods has become less affordable over the past 15 years.

This view is supported by LAQ's experience that:

1. Queenslanders in flood affected areas that have experienced recurrent natural disasters are increasingly unable to afford the premiums for flood cover leaving fewer who are insured and many who have no insurance cover at all.
2. Many areas in Southeast Queensland that are flood prone are also areas of significant economic disadvantage. Residents of these areas simply cannot afford the increased premiums being charged to insure against the risk of floods.
3. Some consumers in Queensland are being quoted insurance premiums that provide flood cover costing in the tens of thousands of dollars. Anecdotally the highest premium LAQ is aware of some consumers who have received quotes for flood insurance in excess of \$60,000 per annum.

**The effects**

This problem is only going to get worse as:

- (a) Climate change affected disasters become more frequent and more extreme. Australia's experience of the last 5 years is supportive of this proposition.
- (b) Cost of living pressures mean that some consumers are not renewing their insurance or only taking out insurance with a high excess to try and reduce their premiums and make them more affordable.

As seen over the past 5 years the effect of this problem is that the Government becomes a defacto insurer for those people who cannot afford insurance or cannot afford comprehensive insurance.

**The solution**

This is not a problem that can be solved by the implementation of one policy. It requires a suite of initiatives which include:

1. Investment in mitigation and resilience measures e.g. rebuilding homes to withstand floods, buy backs and rezoning of flood affected areas, refer to the Queensland Resilient Homes Fund.
2. Better land use and planning decisions about where housing is located.
3. Subsidies to make insurance more affordable e.g. the Northern Australia Insurance Pool. It is important to note that any subsidies must be large enough to reduce premiums so that they are affordable for consumers.
4. Greater transparency in insurance renewal documents so that consumers can easily identify how undertaking improvements to their property will reduce premiums.
5. Increasing competition in the insurance market without reducing the protections offered to consumers through mechanisms such as AFCA and internal dispute resolution.

6. There are innovative low-cost products in the market that the Industry could look at expanding.

**(h) claimants' and insurers' experiences of internal dispute resolution processes;**

**The problem**

The recent experience of consumers and LAQ with insurer's IDR process has not been positive. Consumers have expressed to us that they feel that:

1. IDR does not always give adequate weight to the consumers direct experience of a flood event.
2. IDR relies too heavily on expert reports that do not always provide adequate evidence regarding causation in a flood event.
3. IDR is not always consistent in its decision making.
4. IDR does not always explain to consumers the information that they need to provide that will most assist IDR to properly review a claim.
5. They feel the IDR is a tick a box exercise that insurers are not always invested in.

**The effects**

As a consequence:

- (a) consumers do not trust the IDR process which means more claims end up being lodged with AFCA.
- (b) Claims that should be being resolved at an IDR level are not. This is supported by the AFCA figures showing large numbers of complaints being resolved at the early levels of their complaint processes.
- (c) Unnecessary complaints are being lodged with AFCA because the IDR process is not giving adequate weight to the consumer experience.

**The solutions**

1. Improvements in the quality of reports provided by assessors, hydrologists and other experts.
2. More senior people involved in the early stages of a complaint process.
3. More staff in IDR teams.
4. Better communication with consumers about the types and amount of information that is needed as part of an IDR process.
5. More weight must be given to the consumer experience in the IDR process.

**(i) the impact of land use planning decisions and disaster mitigation efforts on the availability and affordability of insurance.**

**The problem and effects**

1. In LAQ's experience, there is a pattern of housing estates and/or new developments being located in flood prone land.

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2. Because the land is flood prone it is usually cheaper housing and attracts people from lower socio-economic backgrounds.
3. Because the land is flood prone, the risk from an insurer's perspective is higher and the insurance premiums are higher.
4. These premiums are unaffordable for many consumers from lower socio-economic backgrounds.

### The solution

1. Better land use and planning decisions so housing is not located in flood prone areas.
3. **The inquiry shall also have regard to insurer preparedness for future flood events.**  
LAQ agrees it is important that insurers are prepared for future flood events.
4. **The inquiry will take into consideration findings from other reports such as Deloitte's external review of insurers' responses to the 2022 floods, and ASIC's claims handling review.**  
LAQ supports the recommendations of ASIC's claims handling review.

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